

ENTERED

May 10, 2019

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
	§	
v.	§	Criminal Action No. H-19-109
	§	
FRANCISCO RODRIGUEZ	§	
RANGEL.	§	

ORDER

Pending before the Court is Defendant's Motion to Suppress and Request for Evidentiary Hearing (Document No. 24). On April 17, 2019, the Court conducted a hearing ("Suppression Hearing"). Having considered the motion, response, evidence presented, witness testimony and oral argument heard at the Suppression Hearing, and applicable law, the Court determines the motion should be denied. Accordingly, the Court now enters the following findings of fact and conclusions of law. Any finding of fact that should be construed as a conclusion of law is hereby adopted as such. Any conclusion of law that should be construed as a finding of fact is hereby adopted as such.

I. BACKGROUND

On February 19, 2019, a federal grand jury in Houston, Texas returned a two-count indictment against Defendant Francisco Rodriguez Rangel ("Rangel") for: (1) conspiracy to possess with intent to distribute controlled substance; and (2)

possession with intent to distribute controlled substance.¹ The controlled substance alleged in the indictment is 5 grams or more of cocaine. On March 18, 2018, Rangel moved to suppress the evidence found during the search of Rangel's vehicle.

II. FINDINGS OF FACT

1. On January 18, 2019, Randy Thumann ("Thumann"), stopped a vehicle traveling east on Interstate-10.²
2. Thumann is a sergeant employed by the Fayette County Sheriff's Office.³
3. Thumann has been employed by the Fayette County Sheriff's Office for twelve years and has a total of sixteen and a half years of law enforcement experience.⁴
4. Thumann's primary duties include highway drug interdiction.⁵
5. The vehicle Thumann stopped was a white SUV, driven by Rangel.⁶
6. Thumann's vehicle was stationary in the median and positioned perpendicular to Interstate-10 at the time he witnessed Rangel's vehicle.⁷

¹ *Indictment*, Document No. 13.

² *Testimony of Thumann*, Transcript at 10–12.

³ *Testimony of Thumann*, Transcript at 10.

⁴ *Testimony of Thumann*, Transcript at 10.

⁵ *Testimony of Thumann*, Transcript at 10–11.

⁶ *Testimony of Thumann*, Transcript at 11.

7. Thumann followed Rangel's vehicle and ran some routine computer checks.⁸

Thumann did not turn his sirens or lights on while running the computer checks.⁹

8. The computer checks Thumann ran included a check on Rangel's vehicle's travel patterns, based on the vehicle's license plate.¹⁰

9. Thumann obtained travel patterns from the Department of Public Safety indicating Rangel's vehicle had made three prior trips to Houston.¹¹ Specifically, the computer check showed a pattern of quick turnaround trips from Mexico to Houston and back.¹²

10. Thumann testified that he also observed Rangel traveling in the left passing lane while not passing.¹³

⁷ *Testimony of Thumann*, Transcript at 12–13; Government's Exhibit 1.

⁸ *Testimony of Thumann*, Transcript at 14.

⁹ *Testimony of Thumann*, Transcript at 15.

¹⁰ *Testimony of Thumann*, Transcript at 15, 17.

¹¹ *Testimony of Thumann*, Transcript at 17; Government's Exhibit 4.

¹² *Testimony of Thumann*, Transcript at 16.

¹³ *Testimony of Thumann*, Transcript at 23.

11. Thumann's dashcam video shows Rangel's vehicle traveling in the left lane while not passing another vehicle.¹⁴ **Thumann's dashcam video also clearly shows both Rangel and Thumann pass a "left lane for passing only" sign.**¹⁵

12. After Thumann approached behind Rangel in the left lane, Rangel moved to the right lane.¹⁶ Thumann then turned his vehicle's lights on to initiate the stop on Rangel's vehicle.¹⁷

13. When Thumann activated the lights on his vehicle, the audio on Thumann's dashcam automatically turned on.¹⁸

14. Rangel did not speak English and Thumann therefore called Juventino Castro ("Castro") at the Houston Police Department to assist him in communicating with Rangel.¹⁹ Castro is fluent in Spanish and assisted in interpreting communication between Thumann and Rangel.²⁰

¹⁴ Defendant's Exhibit 1 at 00:00–00:44.

¹⁵ Defendant's Exhibit 1 at 00:19.

¹⁶ Defendant's Exhibit 1 at 00:35–00:44.

¹⁷ *Testimony of Thumann*, Transcript at 34.

¹⁸ *Testimony of Thumann*, Transcript at 34.

¹⁹ *Testimony of Thumann*, Transcript at 20–21.

²⁰ *Testimony of Castro*, Transcript at 68.

15. Rangel provided Thumann with his driver's license and vehicle registration.²¹ Thumann noticed Rangel was nervous; Rangel's hands were trembling, and his carotid artery was visibly pulsating.²²

16. Thumann also noticed the seats of Rangel's car appeared to be stretched.²³ In Thumann's experience, he has come across many aftermarket seat compartments built to hold illegal drugs.²⁴

17. Castro inquired about Rangel's travel itinerary, including how many times Rangel had traveled to Houston before.²⁵

18. Rangel told Castro it was his first time to travel to Houston in the vehicle Rangel was in.²⁶

19. After relaying Rangel's answers to Thumann, at Thumann's request, Castro asked Rangel some follow-up questions regarding the inconsistency in Rangel's answer and the computer check Thumann received.²⁷ Sepcifically, Thumann asked Castro to ask Rangel how long he has had his vehicle and whether anyone else

²¹ *Testimony of Thumann*, Transcript at 20–21.

²² *Testimony of Thumann*, Transcript at 22.

²³ *Testimony of Thumann*, Transcript at 63.

²⁴ *Testimony of Thumann*, Transcript at 63.

²⁵ *Testimony of Thumann*, Transcript at 41.

²⁶ *Testimony of Castro*, Transcript at 70.

²⁷ *Testimony of Castro*, Transcript at 70–71.

drives it.²⁸ Rangel responded that he has had his vehicle for about a year and he is the only one who drives it.²⁹

20. Castro explained to Rangel what the license plate readers on the highways are and that they showed his vehicle had traveled to Houston multiple times.³⁰ After Castro's explanation, Rangel admitted he had made prior trips to Houston in the vehicle.³¹

21. Castro asked Rangel for consent to search his vehicle and Rangel consented.³²

22. A search of Rangel's vehicle revealed 49 kilograms of cocaine, concealed in the seats.³³

III. CONCLUSIONS OF LAW

23. The Fourth Amendment protects individuals "against unreasonable searches and seizures." U.S. Const. amend. IV.

²⁸ *Testimony of Thumann*, Transcript at 62–63.

²⁹ *Testimony of Castro*, Transcript at 71.

³⁰ *Testimony of Castro*, Transcript at 71.

³¹ *Testimony of Castro*, Transcript at 71–72.

³² *Testimony of Castro*, Transcript at 72.

³³ *Testimony of Thumann*, Transcript at 24.

24. “Traffic stops are deemed seizures for the purposes of the Fourth Amendment.” *United States v. Lopez-Moreno*, 420 F.3d 420, 430 (5th Cir. 2005).

25. The legality of a traffic stop is analyzed under the framework articulated in *Terry v. Ohio*, 392 U.S. 1 (1968).

26. The *Terry* analysis is two-pronged, requiring a court to determine whether the officer’s action was (1) justified at its inception; and (2) reasonably related in scope to the circumstances which justified the interference in the first place. *Lopez-Moreno*, 420 F.3d at 430.

27. Rangel moves to suppress all evidence obtained as a result of Rangel’s vehicle search contending: (1) Thumann did not have an objectively reasonable suspicion to justify the stop at its inception; and (2) Thumann prolonged the stop longer than constitutionally permissible. The Government contends Rangel’s motion to suppress should be denied because: (1) the stop was justified at its inception; and (2) the stop was reasonable in scope and duration to the circumstances of the case. The Court addresses each contention in turn.

A. Justification at Inception

28. The Government contends Thumann’s stop was justified at the inception because Rangel was driving in the left passing lane without passing another vehicle.

29. “For a traffic stop to be justified at its inception, an officer must have an

objectively reasonable suspicion that some sort of illegal activity, such as a traffic violation, occurred, or is about to occur, before stopping the vehicle.” *Lopez-Moreno*, 420 F.3d at 430.

30. The Government bears the burden of proof by a preponderance of the evidence that the stop was supported by “a reasonable, articulable suspicion” that a traffic violation occurred. *United States v. Jordan*, 232 F.3d 447, 448 (5th Cir. 2000).

31. Under Texas law, it is a traffic violation to drive in the left lane without passing when there is a “left lane for passing only” sign providing notice. *Abney v. State*, 394 S.W.3d 542, 548 (Tex. Crim. App. 2013). “Without such a sign present within a reasonable distance of the traffic stop, there is no offense.” *United States v. Castillo*, 28 F. Supp. 3d 673, 674 (S.D. Tex. June 30, 2014) (Costa, J.).

32. To justify a stop based on a vehicle driving in the left lane without passing, an officer must have a reasonable suspicion that the vehicle passed a “left lane for passing only” sign. *Abney*, 394 S.W.3d at 548.

33. Thumann’s dashcam video shows Rangel driving past a “left lane for passing only sign” while Rangel is traveling in the left lane.³⁴ After Rangel and

³⁴ Defendant’s Exhibit 1 at 00:10–00:19.

Thumann both drive past the “left lane for passing only sign,” Thumann’s dashcam footage shows Rangel traveling in the left lane while not passing a vehicle.³⁵

34. The Court therefore finds Thumann had an objectively reasonable suspicion that Rangel had committed a traffic violation by traveling in the left lane while not passing another vehicle. Thus, the Government met its burden to show Thumann’s stop of Rangel’s vehicle was justified at its inception.³⁶

B. Scope and Duration of Stop

35. An officer’s actions after stopping a vehicle must be reasonably related to the circumstances that justified the stop, or to dispelling reasonable suspicion developed during the stop. *United States v. Brigham*, 382 F.3d 500, 507 (5th Cir. 2004).

36. “[A]n officer may examine driver’s licenses and vehicle registrations and run computer checks as part of his investigation of the circumstances that originally caused the stop. He may also ask about the purpose and itinerary of the occupants’ trip as part of this investigation.” *United States v. Pack*, 612 F.3d 341, 350 (5th Cir. 2010), *opinion modified on denial of reh’g*, 622 F.3d 383 (5th Cir. 2010).

³⁵ Defendant’s Exhibit 1 at 00:19–00:45.

³⁶ The Government also contends the stop was justified at its inception because a passenger in Rangel’s vehicle was not wearing a seat belt. In light of the Court’s holding, however, the Court need not address this contention.

37. If an officer develops reasonable suspicion of additional criminal activity, “he may further detain the occupants of the vehicle for a reasonable time while attempting to dispel this reasonable suspicion.” *United States v. Andres*, 703 F.3d 828, 833 (5th Cir. 2013) (citations omitted).

38. Courts must look at “the totality of the circumstances” in evaluating whether the police had reasonable suspicion of criminal activity. *United States v. Arvizu*, 534 U.S. 266, 271 (2002).

39. Immediately after stopping Rangel, Thumann determined Rangel did not speak English and called Castro to assist him in communicating with Rangel. Thumann asked for Rangel’s driver’s license and registration and his trip itinerary. During this initial investigation, Thumann also observed Rangel was extremely nervous, the seats in Rangel’s car appeared stretched, and Rangel gave an inconsistent representation of how many times he had traveled to Houston in his vehicle. The Court therefore finds, based on the totality of the circumstances, including Thumann’s experience in drug interdiction, Thumann developed additional reasonable suspicion to justify further questioning Rangel. *See Pack*, 612 F.3d at 362 (holding, under totality of the circumstances, including driver’s nervousness and inconsistent stories, officer had a reasonable suspicion to detain the occupants for a reasonable amount of time to investigate the possibility they were carrying contraband). The additional questioning included how long Rangel

has had the vehicle and whether anyone else drives it.³⁷ Rangel said he is the only one who drives the vehicle and admitted he had previously misrepresented how many times he had traveled to Houston. Castro then asked Rangel for consent to search his vehicle and Rangel consented.³⁸ The time from the initial stop to Rangel's consent is about seven minutes, including the time Castro spent interpreting communication between Thumann and Rangel.³⁹ The Court therefore finds the Government has shown the duration and scope of the stop was reasonably related to the circumstances of the case. Accordingly, Rangel's motion is denied.

III. CONCLUSION

Based on the foregoing, the Court hereby

ORDERS that Defendant's Motion to Suppress and Request for Evidentiary Hearing (Document No. 24) is **DENIED**.

SIGNED at Houston, Texas, on this 10 day of May, 2019.



DAVID HITTNER
United States District Judge

³⁷ Defendant's Exhibit 1 at 6:25.

³⁸ The Court notes Rangel does not challenge the validity of his consent to search his vehicle.

³⁹ Defendant's Exhibit 1 at 1:20–8:11.